w/o Muniyandi[5], a Malaysian case dealing with identical provisions with those of our Immigration Act, a wife of a citizen lost her right of permanent residence. She later returned to Malaysia on a pass. It was held that the wife was not entitled as of right to an entry permit to enter or remain in Malaysia by reason solely of the fact that her husband was a citizen. This case also recognised the public policy element: see pp. 302 H-I and 303 A-D which in our legislation finds expression in section 4 of the Immigration Act under which the Minister for Home Affairs is empowered to issue directions to the Controller of Immigration in relation to matters which affect the immigration policy of Singapore.

I now turn to the complaint of the applicant that in this case he has not been accorded equality and equal protection of the law. The facts, however, are these. Many foreign wives of citizens of Singapore have not been granted passes to enter and remain in Singapore. According to the affidavit of Phua Ah Kok the Government's policy on the grant of permanent residence to all foreigners, including foreign wives of citizens of Singapore, is strict in view of Singapore's small land area and limited resources. This court was told that from 1973 to 1983 27,199 applications for permanent residence were received from wives of citizens of Singapore. Of these 20,452 applications were approved.

The applicant in *Meenal's* case also complained that her husband was discriminated against contrary to Article 8 of the Malaysian Constitution which is equivalent to our Article 12. It was, not unexpectedly, in view of its untenability given a short shrift and was described as "too far-fetched": see p. 302 F-H rhc.

In conclusion, I want to set out the attitude of the courts when dealing with immigration litigation of the nature before me. I respectfully adopt what was said by the then Federal Court of Malaysia in *Andrew s/o Thamboosamy* v. *Superintendent of Pudu Prisons, Kuala Lumpur*[6] per Tun Suffian L.P. (as he then was) at p. 158 D/E to F/G 1hc:-

"Government is the most powerful body in the country and the court should be vigilant to see that Government does not exceed its power when dealing with individuals. But at the same time we are of the opinion that the problem of dealing with illegal immigrants is a matter of public policy to be decided by Parliament and by the Executive, that in this matter the proper authority for enacting the necessary legislation is Parliament and that if the Government exercises a power conferred on it by Parliament and keeps within the law, then the duty of the court is quite clear; the court should simply apply the law, no matter how harsh its effect may be on the immigrant. His remedy is then not judicial, but political and administrative."

For these reasons the application is dismissed with costs.

Application dismissed.

Solicitors: *Nathan Isaac & Co.*

J. ANNATHURAI v. ATTORNEY-GENERAL

[O.C.J. (Chua J.) July 15, 1987]
[Singapore – Suit No. 817 of 1983]

Constitutional Law – Citizenship – Person born in Singapore – Termination of citizenship – Similar powers for – Authority has discretion to choose – Application for Singapore citizenship – Applicant's voluntary exercise of rights of foreign citizenship – Application for Singapore citizenship disallowed – Constitution of Singapore, arts. 133, 134 & 135.

Citizenship – Termination of – Person born in Singapore – Voluntary exercise of rights of foreign citizenship – Application for Singapore citizenship disallowed.

The plaintiff in this case was born in Singapore on October 15, 1952. He attended a primary school in Singapore. His parents, who were born outside Singapore and came to Singapore in the forties, were British Subjects and became Singapore citizens by registration in 1958, after the passing of the Singapore Citizenship Ordinance 1957. By section 4 of the said Act, the plaintiff became a citizen of Singapore by birth.

In 1964 Singapore then was part of Malaysia. The plaintiff and the whole family applied for and were granted in Singapore Malaysian Provisional Passports which were valid for one year. The family left for India and arrived there on March 19, 1964. The plaintiff continued his education at Chidambaram.

In March 1970 the plaintiff completed his secondary school education. He then applied for a Singapore passport from the Malaysian High Commission in Madras but his application was rejected on April 11, 1970, and he was advised to apply for a Certificate of Status instead. The plaintiff's Secondary School Leaving Certificate described him as an Indian National.

On May 7, 1975, the plaintiff obtained an Indian passport by representing to the authorities in India that he was born in India. The plaintiff entered Singapore on his Indian passport in the same year and remained in Singapore for a period of three months during which period he

did not make any application or inquiries regarding his Singapore citizenship or Singapore passport.

On March 13, 1976, the plaintiff applied for a Certificate of Status through a local sponsor, his brother Henry without revealing that he possessed and had already travelled on an Indian passport. The application was rejected on May 17, 1976.

The plaintiff entered Singapore again on his Indian passport in 1981 and on June 23, 1981, his brother Henry applied for permanent residence on his behalf. His use of the Indian passport in 1975 was referred to the Registrar of Citizens and the Minister of Home Affairs on being satisfied that he has exercised rights in India within the scope of Article 134(3) of the Constitution of Singapore and having considered the plaintiff's representation, terminated his Singapore Citizenship by a Declaration on March 13, 1982.

The plaintiff sought a declaration

(i) that the show cause notice dated September 28, 1981 issued to the plaintiff was null and void and of no effect;

(ii) that the declaration as to the cessation of citizenship under the provision of Article 134(3) of the Constitution of the Republic of Singapore by the Minister dated March 13, 1982 in respect of the plaintiff is null and void and of no effect;

(iii) that the plaintiff was a citizen of Singapore and that the Comptroller of Immigration be directed to issue to the plaintiff a Certificate of Status to that effect;

(iv) that as citizen the plaintiff was entitled to remain in Singapore and could not be excluded therefrom under Article 13 of the Constitution of the Republic of Singapore.

Held, dismissing the plaintiff's claim: (1) the Constitution provides for two parallel methods of taking away citizenship for exercising foreign citizenship rights, namely: termination – Article 134 and deprivation – Article 135. The authorities show that where similar powers are conferred on an authority the discretion rests with the authority to determine which power to exercise;

(2) the statement that the plaintiff is an Indian citizen in his Indian passport is not a mere declaration. His whole conduct from 1964 onwards is consistent with that of an Indian citizen, exercising the rights of an Indian citizen;

(3) it is clear that the plaintiff did voluntarily claim and exercise rights of a citizen of India within the meaning of Article 134(3);

(4) on the facts of the present case the Government had not acted unreasonably and had acted on good grounds.

Cases referred to:

(1) *Westminster Bank* v. *Minister of Housing & Local Government* [1971] A.C. 508.

(2) *Hoveringham Gravels* v. *Secretary of State for the Environment* [1975] 1 Q.B. 754.

(3) *Najar Singh* v. *Government of Malaysia* [1976] 1 M.L.J. 203.

CIVIL SUIT.

Amarjit Singh for the plaintiff.

Chao Hick Tin (Senior State Counsel) for the defendant.

Cur. Adv. Vult.

Chua J.: The plaintiff seeks a declaration:

"(i) that the show cause notice dated September 28, 1981 issued to the plaintiff is null and void and of no effect.

(ii) that the declaration as to the cessation of citizenship under the provision of Article 134(3) of the Constitution of the Republic of Singapore by the Minister of Home Affairs dated March 13, 1982 in respect of the plaintiff is null and void and of no effect.

(iii) that the plaintiff is a citizen of Singapore and that the Comptroller of Immigration be directed to issue to the plaintiff a Certificate of Status to that effect.

(iv) that as Citizen the plaintiff is entitled to remain in Singapore and cannot be excluded therefrom under Article 13 of the Constitution of the Republic of Singapore."

The following facts are not in dispute. The plaintiff was born in Singapore on October 15, 1952. He attended a primary school in Singapore when he was six years old – Alexandra Estate Primary School. His parents, who were born outside Singapore and came to Singapore in the forties, were British Subjects and became Singapore citizens by registration in 1958, after the passing of the Singapore Citizenship Ordinance 1957. By section 4 of the said Ordinance, the plaintiff became a citizen of Singapore by birth. The plaintiff's father worked as a Storekeeper in the British Army in Singapore from 1945-1963. In 1964 he faced retrenchment and he resigned and was given a small pension. He had a large family of eleven children and he decided to leave for India in 1964 to live there with his family.

In 1964 Singapore then was part of Malaysia. The plaintiff and the whole family applied for and were granted in Singapore Malaysian Provisional Passports which were valid for one year. The family left for India by boat and arrived in Madras on March 19, 1964.

The plaintiff was put in the Government High School at Chidambaram. The plaintiff's brother, Henry William ("Henry") obtained a Singapore passport and returned to Singapore from India in 1969. He took his oath of allegiance and then returned to India.

In March 1970 the plaintiff completed his Secondary School. He was then seventeen years old. He then applied for a Singapore passport from the Malaysian High Commission in Madras but his application was rejected on April 11, 1970, and he was advised to apply for a Certificate of Status ("CS") instead. The plaintiff's Secondary School Leaving Certificate issued under the authority of the Government of Tamil Nadu on March 5, 1970, described him as an Indian National (AB-74).

The plaintiff continued his studies at the Annamalai University in nearby Annamalainagar. After obtaining a Bachelor of Commerce degree in 1974 the plaintiff enrolled for a Masters Degree in Commerce.

On May 7, 1975, the plaintiff obtained an Indian passport by representing to the authorities in India that he was born in India (AB-79). The plaintiff entered Singapore on his Indian passport in the same year and remained in Singapore for a period of three months during which period he did not make any application or inquiries regarding his Singapore citizenship or passport.

On March 13, 1976, the plaintiff applied for a CS through a local sponsor, his brother Henry without revealing that he possessed and had already travelled on an Indian passport. The application was rejected on May 17, 1976.

The plaintiff entered Singapore again on his Indian passport in 1981 and on June 23, 1981, his brother Henry applied for permanent residence on his behalf. His use of the Indian passport in 1975 was referred to the Registrar of Citizens and the Minister of Home Affairs on being satisfied that he has exercised rights in India within the scope of Article 134(3) of the Constitution of Singapore (the Constitution) and having considered the plaintiff's representation, terminated his Singapore Citizenship by a Declaration on March 13, 1982 (AB-113). It is this decision by the Minister to terminate the plaintiff's citizenship which is the subject matter in this case.

Article 134 of the Constitution provides:

"134.(1) If the Government is satisfied that any citizen of Singapore by birth, descent, registration or naturalisation has at any time after April 6, 1960, acquired by registration, naturalisation or other voluntary and formal act (other than marriage) the citizenship of any country outside Singapore, the Government may declare such person to have ceased to be a citizen of Singapore.

(2) Any citizen specified in clause (1) who has at any time after April 6, 1960, voluntarily claimed and exercised any rights available to him under the law of any foreign country, being rights accorded exclusively to the citizens or nationals of the foreign country, shall cease to be a citizen of Singapore. If any question arises as to whether any such person has ceased to be a citizen of Singapore under this clause, the same shall be determined by the Government whose declaration thereon shall be final and shall not be called in question in any court."

"(3) If the Government is satisfied that any citizen of Singapore specified in clause (1) has, at any time after April 6, 1960, voluntarily claimed and exercised any rights available to him under the law of the United Kingdom or of the Republic of Ireland or of any other country, other than Singapore, for the time being included in subsection (3) of section 1 of the British Nationality Act, 1948, being rights not available to other Commonwealth citizens, the Government may declare such person to have ceased to be a citizen of Singapore."

The plaintiff maintains that after his application for a Singapore passport was rejected on April 11, 1970, he sent an application for a CS dated May 20, 1970, to the Controller of Immigration, Singapore, through a relative, C. Solomon, his local sponsor. C. Solomon's evidence is that he made a Statutory Declaration as requested by the Immigration Department and he personally submitted the application form and Statutory Declaration to the Immigration Department. He received no reply; he was not asked to go for an interview. The plaintiff, however, says that he received a reply from the Immigration Department sent to him in Madras, rejecting his application. He has misplaced the reply.

The Immigration Department says that the Index Card in relation to the plaintiff kept by the Department does not show that an application for CS was made by the plaintiff in 1970 or 1971 but shows an application in 1976. The defendant maintains that the plaintiff never submitted an application for a CS in 1970.

The plaintiff claims that the Assistant High Commissioner for Malaysia in Madras forwarded two copies of the application for CS form with his letter of rejection dated April 11, 1970, (AB-88). He forwarded to C. Solomon one copy of the Application form and he kept the other copy for his file. In-chief the plaintiff said: "They enclosed an application form for Certificate of Status. I filled up the form and signed it." It was only when he was cross-examined that he claimed that he received two copies of the application form (Ex P.3).

In his letter AB-88 the Assistant High Commis-

sioner forwarded "one set" of application form for CS. As explained by Mr. Chua Chong Chee (DW 1), a Senior Immigration Officer, a set of documents would include the Application form itself, a Statutory Declaration form and list of the documents to be produced. If two Application forms were sent to the plaintiff, as he claims, the Assistant High Commissioner would have said "two sets."

The plaintiff's inability to produce the alleged letter from the Singapore Immigration Department which he said he received turning down his application for CS shows that there was no such letter of rejection because he never put in the application. He had kept all documents including AB-88. It is clear that he received only one set of the Application form and that was Ex P.3 which is still in his possession.

C. Solomon was the local sponsor yet he said he never received any reply. It is to be noted that in respect of the 1976 CS application, the letter of rejection was addressed to Henry the local sponsor. The whole point of having a local sponsor is to facilitate communication. Solomon said that he expected to get a reply yet he took no action when no reply was received. It is strange that the plaintiff, who alleged that he received a rejection letter from the Immigration Department, Singapore, did not communicate with Solomon on the rejection he received.

Counsel for the plaintiff sought to question the accuracy of the Index Card kept by the Immigration Department. The fact that the 1970 application of the plaintiff for a passport was noted, there is no reason why the CS application, if made in 1970, would not have been noted down in the Index Card.

I find that the plaintiff did not apply for a CS in 1970 as alleged by him.

The plaintiff came to Singapore on his Indian passport which described him as a Citizen of India. He said he came here with the specific purpose of applying for a CS and a Singapore passport. He stayed here for a period of three months during which period he did nothing about applying for a CS and a Singapore passport. His explanation why he took no action was that his brother Henry advised him to return to India to complete his studies and he, Henry, would apply for a CS and passport on his behalf. In cross-examination he said that he did not inform Henry beforehand that he was coming to Singapore though it would appear that his father did. Henry told him that if he wanted to apply for CS while he was in Singapore he should not leave Singapore as he would be called for interviews and that would interrupt his studies. He admitted that during his stay in Singapore he also travelled to Malaysia. He said he went to Seremban to see his seriously ill grandmother.

There is no doubt that the plaintiff merely wanted to come to Singapore for a holiday on his Indian passport and as an Indian national. He voluntarily chose to travel on his Indian passport. He made no attempt prior to leaving India in 1975 to obtain Singapore travelling papers. He must have realised that if he did declare his status as a Singaporean he would have to serve his National Service. The simplest way out, which he took, was to come quietly to Singapore and go away quietly as an Indian national.

In the application for a CS in 1976 which Henry made on the plaintiff's behalf, no mention was made that the plaintiff had obtained an Indian passport in 1975 and had travelled on it to Singapore and Malaysia. The 1976 application for a CS was rejected because the processing officer was not satisfied as to the plaintiff's identity. No appeal was lodged by Henry or the plaintiff against the rejection of the application.

It was not until 1981, when the plaintiff returned to Singapore and sought to claim his rights as a citizen, that the fact that he had obtained an Indian passport in 1975 came to light. The Ministry of Home Affairs, having satisfied itself that the plaintiff was the person referred to in the Birth Certificate AB-36, proceeded to take action to declare that the plaintiff had ceased to be a citizen of Singapore on the ground that he did obtain an Indian passport and which brought him within the ambit of Article 134(3) of the Constitution. A show-cause letter (AB-104) was issued to the plaintiff asking him to make representations or to produce evidence that he had not voluntarily claimed and exercised any rights available to him under the law of India, being rights accorded exclusively to citizens of India. This the plaintiff duly did by his letter of October 14, 1981, (AB 108).

The Government having considered the matter decided that the plaintiff's citizenship should be terminated and a Declaration was made by the Minister of Home Affairs on March 13, 1982. A letter dated March 27, 1982, enclosing the Decla-

ration signed by the Minister (AB-114) was sent by registered post by the Citizenship Registry to the plaintiff informing him of the decision of the Minister. However, this letter was returned by the postal authorities unclaimed. Subsequently, pursuant to representations made on his behalf by a M.P., the Citizenship Registry wrote again to the plaintiff on May 6, 1982, (AB 112) enclosing the Declaration signed by the Minister.

The Constitution provides for two parallel methods of taking away citizenship for exercising foreign citizenship rights, namely: termination – Article 134 and deprivation – Article 135.

It is submitted by the plaintiff that the show-cause letter AB-104 is bad in law as there is no provision for such a show-cause letter to be issued under Article 134; and having regard to the facts alleged in AB-104 that in obtaining and travelling on the Indian passport the plaintiff is an Indian citizen, the plaintiff can only be deprived of his Singapore citizenship under Article 135 which specifically provides for the deprivation of citizenship on the acquisition or exercise of foreign citizenship by any citizen of Singapore.

It is further submitted that the show-cause letter should have been issued under Article 135 and the failure by the Registrar of Citizens to issue the show-cause letter under Article 135 has gravely prejudiced the plaintiff in that the plaintiff has been deprived of his constitutional right and both the procedural and substantive protection provided by the mandatory provision of Article 133(1) of the Constitution of Singapore to have his case referred to a Committee of Inquiry and to be heard prior to the deprivation of his citizenship under the said Article 135.

The Government may deprive a Singapore citizen of his citizenship under Article 135 and the individual citizen has the right to have his case referred to a Committee of Inquiry under Article 133. No corresponding right was provided for under Article 134. The two Articles cover essentially the same ground. Nothing therein limits the one against the other. It would appear that it is for the Minister, acting on behalf of the Government, to decide on which of the two Articles to proceed.

Counsel for the plaintiff has asserted that it was an inadvertent omission that Article 134 was not mentioned in Article 133 and seeks to rely on the Constitution (Amendment) Act, 1985, (which came into operation on January 2, 1986), to show that it was always the intention that Article 133 should also apply to Article 134. As pointed out by counsel for the defendant, if at all, the 1985 Amendment shows that the Government and Parliament felt that the then dual system should not continue and decided to streamline it: thus the amendment.

This point of view was clearly expressed by the Minister for Home Affairs in his speech on the second Reading of the Bill:

> "Finally, Mr Deputy Speaker, Sir, I might point out that Articles 134 and 135 of the Constitution have been redrafted and re-enacted and I should explain the reason. This is because the grounds for deprivation and termination of citizenship in the existing Articles overlap.
>
> To illustrate, both Articles at present refer to the ground of having acquired the citizenship of another country. Another illustration is that both Articles refer to a citizen who has exercised rights of a foreign citizen. There is duplication and this duplication causes confusion. Furthermore, the existing Article 134 does not provide for reference to a Committee of Inquiry. We have therefore redrafted and re-enacted these two Articles, unnecessary duplication is avoided and all cases under both Articles 134 and 135 will be referred to a Committee of Inquiry." (Singapore Parliamentary Debates Vol 46, Column 291).

There was no mention by the Minister that the exclusion of Article 134 from the procedural requirements of Article 133 was an oversight. Parliament had chosen to set up two different ways by which the Government might deprive a Singapore citizen of his citizenship. Clearly it was the intention to confer a discretion on the Government as to which Article to apply in each case.

The authorities show that where similar powers are conferred on an authority, the discretion rests with the authority to determine which power to exercise – *Westminster Bank* v. *Minister of Housing & Local Government*[1]; *Hoveringham Gravels* v. *Secretary of State for the Environment*[2]; *Najar Singh* v. *Government of Malaysia.*[3]

The plaintiff contends that he has not "voluntarily claimed and exercised any rights available to him under the law of any foreign country, being rights accorded exclusively to the citizens or nationals of the foreign country" as required by Article 134(3) of the Constitution. The plaintiff points out that the show-cause letter dated September 28, 1981, of the Registrar of Citizens (AB-104) states that the plaintiff is an Indian citizen as an Indian passport was issued on May 7,

1975 and that the plaintiff has used it for travel purposes. The plaintiff contends that the issue of the Indian passport to him and that he has used it as a travel document does not bring him within the ambit of Article 134(3) of the Constitution. More than that is required. He has not taken steps to renounce his Singapore citizenship, he has not abandoned his Singapore citizenship; he has not voluntarily claimed and exercised any rights under the law of India, like voting in elections in India. The plaintiff points out that by Article 134(4) of the Constitution, by using the Indian passport he is only "deemed voluntarily to claim and exercise a right available" under the law of India. He submits that he has right to have his case referred to a Committee of Inquiry under Article 133 of the Constitution.

The statement that the plaintiff is an Indian citizen in his Indian passport is not a mere declaration. His whole conduct from 1964 onwards is consistent with that of an Indian citizen, exercising the rights of an Indian citizen. His Indian Secondary School Leaving Certificate issued uner the authority of the Government of Tamil Nadu on March 5, 1970, described him as an Indian National (AB-74). This Certificate was issued before he obtained his Indian passport. He was trying to hang on to his Indian citizenship and after obtaining the Indian passport in May 1975 he travelled as an Indian citizen.

The plaintiff's application for a Singapore passport in 1970 was turned down. He was asked to apply for a CS which he failed to do. Even assuming that he did apply for a CS in 1970 and was turned down, he did not bother to appeal or ask for a review either immediately or at any time before he obtained his Indian passport and travelled on it in 1975. His application for an Indian passport was clearly voluntary. He said that in 1975 he did not even tell his brother Henry that he was going to Singapore. This is clearly a lie. The truth is that he wanted to go to Singapore for a vacation and felt it more convenient to travel on an Indian passport so that he would not encounter the problem of National Service. He said he went on that trip to claim his citizenship rights. Yet for a period of three months while he was here he did nothing about it. It was a lame excuse to say that his brother urged him to complete his studies first and so he did not proceed with his original intention of claiming citizenship rights.

It is clear that the plaintiff did voluntarily claim and exercise rights of a citizen of India within the meaning of Article 134(3).

It appears to me that on the facts of this case, the Government has not acted unreasonably and has acted on good grounds.

The plaintiff's claim is dismissed with no order as to costs as plaintiff is a legally aided person.

Order accordingly.

Solicitors: *Amarjit Rubin & Partners.*

RE AH YEE CONTRACTORS (PTE.) LTD.

[O.C.J. (Thean J.) July 23, 1987]

[Singapore – Companies Winding Up No. 740 of 1986]

Company Law – Winding up – Application for – Petitioner is shareholder and contributory – Whether petitioner has locus standi – Merits of application.

This was a petition by Lieu Poh Toon, as a contributory for the winding up of Ah Yee Contractors (Private) Limited ("the Company") on the ground that it was just and equitable that the Company should be wound up. The petition was opposed by the Company and another contributory, Goh Ah Aun (Madam Goh) who held more than 50% of the issued shares of the Company.

The Company was incorporated on June 16, 1969 at the instance of one Boey. The petitioner and Boey were named in the Articles as the first directors. At the time of the incorporation of the Company, Boey was the sole proprietor of a business of general building and renovation contractor under the name and style of Ah Yee contractors. Boey practically left the day to day running of the business to the petitioner.

Though the Company was incorporated in 1969, it did not commence carrying on any business until 1975, when it took over the business of Boey then carried on under his sole proprietorship. On January 1, 1975, Madam Goh, the second wife of Boey, was appointed a director of the Company. Boey was the chairman and managing director.

Boey died in August 1983. After Boey's death, Madam Goh assumed the position of chairman of the Company and the petitioner continued to take care of the day to day management.

In 1984 and 1985 the Company suffered losses. It was during this time that differences between the petitioner, who was in charge of the day to day management, and Madam Goh, who was the chairman, soon emerged. On the basis of these differences the petitioner contended that there was a complete deadlock between him and Madam